

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
JOEY DEL RIO, :
:
Plaintiff, : 20 Civ. 7792 (PAE) (KHP)
-v- :
:
COMMISSIONER OF THE SOCIAL SECURITY :
ADMINISTRATION,¹ :
Defendant. :
:
-----X

PAUL A. ENGELMAYER, District Judge:

Plaintiff Joey Del Rio brings this action under the Social Security Act (the “Act”), 42 U.S.C. § 405(g), seeking judicial review of a final decision of the Commissioner of Social Security (the “Commissioner”) denying Del Rio Supplemental Security Income (“SSI”) under the Act.² Before the Court is the September 3, 2021 Report and Recommendation of the Hon. Katharine H. Parker, United States Magistrate Judge, recommending that the Commissioner’s motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure be granted because Del Rio has failed to exhaust his administrative remedies. Dkt. 25 (“Report”). For the following reasons, the Court adopts the Report in full.

DISCUSSION

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28

¹ As of July 9, 2021, Kilolo Kijakazi has been appointed Acting Commissioner of the Social Security Administration (“SSA”).

² Although the Complaint so describes its claim, *see* Dkt. 1 (“Compl.”) at 1, for the reasons discussed in the Report and Recommendation, Dkt. 25 (“Report”), there has been no such final decision.

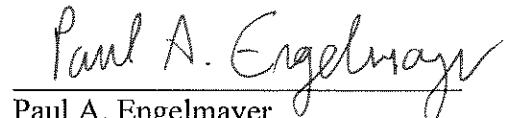
U.S.C. § 636(b)(1)(C). “To accept those portions of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF), 2014 WL 4635575, at *2 (S.D.N.Y. Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009)); *see also, e.g.*, *Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

Because neither Del Rio nor the Commissioner has submitted objections to the Report, review for clear error is appropriate. Careful review of Judge Parker’s thorough and well-reasoned Report reveals no facial error in its conclusions; the Report is therefore adopted in its entirety. The Report explicitly states that failure to object within fourteen days will result in a waiver of objections and will preclude appellate review. Report at 6. Accordingly, the failure to object operates as a waiver of appellate review. *See Caidor v. Onondaga Cty.*, 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam)).

CONCLUSION

For the reasons articulated in the Report, the Court grants the motion to dismiss without prejudice. The Clerk of Court is respectfully directed to terminate the motion pending at docket 18, and to close this case.

SO ORDERED.



Paul A. Engelmayer
United States District Judge

Dated: September 24, 2021
New York, New York